

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CARLOS JOVANNI ESCOBAR,
Defendant

§

vs.

§

Case number: 02-cr-39324

§

UNITED STATES OF AMERICA,
Respondent

§

§

MOTION FOR REDUCTION OF SENTENCE BASED ON GUIDELINE AMENDMENT EFFECTIVE
MARCH 03, 2008 CONCERNING TWO-LEVEL REDUCTION IN BASE OFFENSE LEVEL
FOR COCAINE BASE

RECEIVED
U.S. DISTRICT COURT
SANTO DOMINGO, P.R.
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BEFORE THIS COURT appears Carlos Jovanni Escobar (hereinafter referred to as "Jovanni"), through pro se representation, and respectfully moves this Honorable Court, pursuant to 18 U.S.C. § 3582(c)(2) and 1B1.10 of the Sentencing Guidelines, to reduce his sentence based upon the amendment to 2D1.1 of the Sentencing Guidelines which became effective March 03, 2008 concerning crack cocaine (cocaine base) offenses. In support thereof, Jovanni states as follows:

On December 05, 2003, this Court imposed a 151 sentence as to Jovanni for the offense of conspiracy to distribute five or more kilograms of cocaine, fifty or more grams of crack and/or one or more kilograms of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846. The sentence was founded on an offense level adjustment for crack cocaine, pursuant to U.S.S.G. § 2D1.1, level 32 and a Criminal History category of II which resulted in a guideline range of 135 to 168 months. The Court imposed a sentence in the middle of the guideline range: 151 months imprisonment, to be followed by 5-years of supervised release.

A. Amendment 706 to Section 2D1.1 of U.S. Sentencing Guidelines.

According to the Sentencing Commission's amendment to the Guidelines, 5 grams of cocaine base are assigned a base offense level 24 (51 to 63 months at Criminal History Category of I, which includes the five year statutory minimum for such offenses). Conversely, 50 grams of cocaine base are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year statutory minimum for such offenses). Before Amendment 706 came into effect, the base offense levels for 5 grams and 50 grams of cocaine base were levels 26 and 32 respectively. Cocaine base offenses for quantities above and below the mandatory minimum threshold quantities are also adjusted downward by two levels.

The Sentencing Commission, after amending the guidelines, held further hearings on the equitable issues involved in the application of the amended guideline ranges and concluded, on December 11, 2007, that this guideline amendment is so significant that it must be given retroactive effect under the congressional authorization of 18 U.S.C. § 3582(c). Thus, U.S.S.G. § 1B1.10 was also amended by the Sentencing Commission to expressly make Amendment 706 retroactively applicable to previously-sentenced defendant's such as Jovanni.

The newly-amended U.S.S.G. § 1B1.10(a)(1) provides, in pertinent part, that where:

...a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, a reduction in the defendant's term of imprisonment is authorized under U.S.C. § 3582(c).

As approved by the Sentencing Commission on December 11, 2007, U.S.S.G. § 1B1.10 specifically lists Amendment 706 as included for such retroactive treatment.

The most recent changes to the § 1B1.10 became effective on March 03, 2008. The Commission further stated in the amendment that as to sentences imposed in the mandatory guideline era (also known as the pre-Booker period), the Court should modify the guideline range to reflect the amended guideline. U.S.S.G. § 1B1.10(b)(2)(A) (2008 amendment).

B. The Court's Authority to Reduce Giovanni's Sentence.

Under 18 U.S.C. § 3582(c)(2), the Court has the discretion to reduce a defendant's sentence "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." This Court should exercise that discretion in this case. Section 3582(c)(2) permits a modification of sentence for a defendant, such as Giovanni, "who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission. The statute instructs that a sentencing court "may reduce the term of imprisonment, after considering the factor set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission".

C. Giovanni's Rehabilitative Goals.

Giovanni submits that his conduct subsequent to his commission of the offense is consistent with the rehabilitative goals of the sentencing guidelines. He has made the most of the last 48-months of his incarceration. Specifically, Giovanni has participated in the Bureau of Prison's (BOP's) English Second Language Program (ESL) and GED program. Giovanni has also taken advantage of the BOP's employment and career seeking classes. The list of his course work is as follows: Learning on the Job Training, Workplace Safety, Your Employer's Expectations, Introduction

to Resumes, Exploring Interview Process, Job Application Process, Assessing Your Employability, and Making and Researching Careers. In addition to his job skill courses, Jovanni also participated in the BOP's Health Awareness programs and in several recreational programs. He was also an active participant of Narcotics Anonymous (NA). See Educational Transcript attached herein. Participation in the BOP programs were not a requirement of the Court or the BOP. Jovanni, however, felt that participation in these programs would be beneficial to him in the future.

D. Relief Sought by Jovanni.

The amended guideline was made retroactive for the purposes of granting relief in cases like this in which Jovanni's offense for conviction was enhanced on the now-superseded cocaine guidelines. At the time of sentencing Jovanni had an original total offense level of 32 and a criminal history category of II, which resulted in a guideline range of 135 to 168 months incarceration. Jovanni was sentenced at the middle of the guideline range to 151 months. Under the amended guidelines a two level reduction from offense level 32 would result in an amended offense level of 30 which, would yield Jovanni a guideline range of 108 to 135 months.

WHEREFORE, Jovanni respectfully requests the relief sought in this motion be granted and any other relief this Court may deem just and proper.

Respectfully submitted,

Carlos Escobar
Carlos Jovanni Escobar, Pro se
FCI No. 23589-069
P.O. Box 52020
Bennettsville, SC 29512-5220

C E R T I F I C A T E O F S E R V I C E

I, Carlos Jovanni Escobar, do hereby certify that a true and correct copy of this herein motion has been served to the U.S. Attorney's Office at:

Office of the U.S. Attorney
350 Carlos Chardon Ave.
Suite 1201 Torre Chardon
San Juan, PR 00918

by hand delivering same to prison officials, with sufficient U.S. Postage,
at FCI Bennettsville, South Carolina, on this the 28th day of May, 2008.

Carlos Escobar
Carlos Jovanni Escobar

BEN50 * INMATE EDUCATION DATA * 05-22-2008
 PAGE 001 OF 001 * TRANSCRIPT * 12:01:19

REGISTER NO: 23589-069 NAME.: ESCOBAR-FIGUEROA FUNC: PRT
 FORMAT.....: TRANSCRIPT RSP OF: BEN-BENNETTSVILLE FCI

----- EDUCATION INFORMATION -----
 FACL ASSIGNMENT DESCRIPTION START DATE/TIME STOP DATE/TIME
 BEN ESL NEED ESL NEED-SHOULD BE/IS ENROLLED 03-26-2004 1003 CURRENT
 BEN GED EN ENROLL GED NON-PROMOTABLE 03-26-2004 1003 CURRENT
 BEN GED SAT GED PROGRESS SATISFACTORY 11-14-2007 1227 CURRENT

----- EDUCATION COURSES -----
 SUB-FACL DESCRIPTION START DATE STOP DATE EVNT AC LV HRS
 BEN ESL3 9:00-10:30 WED, FRI 11-28-2005 CURRENT
 BEN SGED 12:00-2:00 WED,FRI 07-13-2007 05-16-2008 P W V 146
 BEN LEARNING ON THE JOB TRAINING 06-18-2007 06-18-2007 P C P 1
 BEN WORKPLACE SAFETY 06-11-2007 06-11-2007 P C P 1
 BEN YOUR EMPLOYER'S EXPECTATIONS 06-01-2007 06-01-2007 P C P 1
 BEN INTRO TO RESUMES (PURPOSE OF) 05-16-2007 05-16-2007 P C P 1
 BEN EXPLORING INTERVIEW PROCESS 05-24-2007 05-24-2007 P C P 1
 BEN SPANISH GUITAR CLASS 04-01-2007 05-24-2007 P C P 28
 BEN THE JOB APPLICATION PROCESS 05-10-2007 05-10-2007 P C P 1
 BEN ASSESSING YOUR EMPLOYABILITY 04-26-2007 04-26-2007 P C P 1
 BEN MAKING & RESEARCHING CAREERS 04-20-2007 04-20-2007 P C P 1
 BEN ANATOMY/PHYSIOLOGY CLASS 01-20-2007 03-18-2007 P C P 20
 BEN CALLIGRAPHY MWF 6-8 08-26-2006 10-04-2006 P C P 12
 BEN FCI SPANISH PARENTING 04-07-2006 05-10-2006 P C P 20
 BEN FCI WALK/JOG PROGRAM 01-09-2006 01-10-2006 P C P 10
 BEN BASIC DRAWING 06-16-2005 08-13-2005 P C P 24
 BEN FCI WALK/JOG PROGRAM 07-30-2005 08-02-2005 P C P 10
 BEN AEROBICS PHASE I 06-22-2005 07-11-2005 P C P 24
 COP RPP6 NA GROUP 11-04-2004 11-10-2004 P C P 12
 COP NARCOTICS ANONYMOUS #7 OPTION 05-18-2004 11-04-2004 P C P 6
 COP AIDS AWARENESS COUNSELOR GROUP 09-01-2004 09-30-2004 P C P 10
 COP ADVANCE BIKE SPIN 07-20-2004 09-15-2004 P C P 3

----- HIGH TEST SCORES -----
 TEST SUBTEST SCORE TEST DATE TEST FACL FORM STATE
 CASAS LIST CERT 221.0 04-14-2006 BEN PASS
 LIST PLACE 225.0 02-09-2006 BEN 2
 READ CERT 223.0 04-14-2006 BEN FAIL
 READ PLACE 215.0 03-09-2007 BEN 2
 SABE/2 MATH COMP 4.7 09-09-2005 COP
 MATH CONC 6.2 06-10-2003 GUA
 READ COMP 4.4 09-09-2005 COP
 VOCABULARY 6.1 06-10-2003 GUA

G0000 TRANSACTION SUCCESSFULLY COMPLETED

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